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Letter dated 29 October 2004 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum concerning the situation of human rights in Myanmar (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 105 (c).

(*Signed*) Kyaw Tint Swe
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Annex to the letter dated 29 October 2004 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on the situation of human rights in Myanmar

I. Introduction

1. The General Assembly adopted resolution 58/247 on the situation of human rights in Myanmar on 23 December 2003. The resolution did not reflect or give due recognition to the true situation in Myanmar. The thrust of the resolution was to exert undue pressure upon the Government for political ends. It was biased, intrusive, selective and subjective. Like the previous ones on the issue, it relied upon unsubstantiated allegations from untrustworthy sources as actual fact, thereby compromising the conclusions. Myanmar, as a result, had no alternative but to reject the unfounded allegations and to dissociate itself from the resolution. A number of countries joined Myanmar in rejecting the contents of the resolution.

2. This memorandum is being circulated to provide accurate information regarding the situation of human rights in Myanmar. It focuses in particular on important developments that have occurred in Myanmar during the past year. These include the reconvening of the National Convention, the first of the seven-step political programme, for a transition to a peaceful, prosperous and modern democratic State.

II. Developments in Myanmar

3. The people of Myanmar hold title to an ancient civilization. In view of the long history of harmony and amity among the national races, but for its bitter legacy as a colony, Myanmar would have been a more united nation.

4. An interval of over a century of colonial rule constituted fertile soil for sowing seeds of mistrust and misunderstanding among the national races. From the dawn of independence in 1948 until the advent of the present Government, the resultant insurgencies of varying ideologies and affiliations convulsed the nation.

5. The economy was ravaged by the Second World War. The armed insurgencies further drained and stunted the normal process of development. The insurgencies defied successive governments to find a lasting solution.

6. The armed forces (the Tatmadaw) had to assume State power in 1988 to stem the anarchy and lawlessness that had taken the country to the brink of disintegration. The Tatmadaw Government abolished the single party socialist system and centralized economy and instituted reforms for a multiparty democratic system and a market-oriented economy.

7. The Government enunciated a set of 12 political, social and economic objectives to address the fundamental issues facing the nation. It initiated a process of national reconciliation to consolidate national unity.

8. To find a solution to the insurgencies, the Tatmadaw leadership used creative efforts, underpinned by sincerity and goodwill, to incrementally build confidence

between the Government and the armed insurgent groups with different political affiliations.

9. Whereas successive Governments demanded total surrender, the present Government invited the armed groups to give peace a chance, allowing them in the interim confidence-building period to continue holding on to their arms. As a result, 17 major and another 17 smaller armed groups have come back into the fold. They are now extensively engaged in respective regional development programmes, together with the Government. Peace and tranquillity now prevails.

10. A ceasefire is in place and peace talks are in progress between the Government and the Karen National Union (KNU), the sole remaining major insurgent group. Optimism prevails for a successful outcome.

11. The Government convened a National Convention in 1992 with the participation of the National League for Democracy (NLD) to formulate basic principles for a new democratic constitution. However in 1995, the NLD unilaterally boycotted the process and withdrew its delegates. For that reason the Convention had to be adjourned in the following year.

12. Desirous that all major players in the country participate for the benefit of the nation as a whole, the Government invited and held discussions with leaders of various national races and political parties, including Daw Aung San Suu Kyi and NLD.

13. She was encouraged by the Government to travel freely in the country and to see first hand many of the Government's infrastructural projects and to obtain a better insight into the developmental achievements of the nation. During these visits she was extended all courtesies and hospitalities. Between June 2002 and April 2003, Daw Aung San Suu Kyi visited 95 townships in various states and divisions in the country. However, during her later visits, being misled by certain political elements, she unfortunately reneged on the agreed ground rules, including security arrangements by the Government, and failed to abide by the terms of agreement with the authorities concerned.

14. Despite the advice by the authorities not to travel to areas where there was no police or security, on the night of 30 May 2003, Daw Aung San Suu Kyi and her followers nevertheless went to Dabayin in Sagaing Division, where an unfortunate confrontation between her followers and local people turned violent. The Government was compelled to adopt certain measures to maintain law and order to protect Daw Aung San Suu Kyi and her senior colleagues from harm. A criminal inquest was instituted regarding this incident.

15. Razali Ismail, Special Envoy of the Secretary-General, met with Daw Aung San Suu Kyi in the course of his tenth visit to Myanmar in June 2003. Contrary to the allegations based on so-called eyewitness accounts he confirmed that she was safe and unhurt. Subsequently representatives of the International Committee of the Red Cross (ICRC) also visited her and her senior colleagues and confirmed that they were well treated.

16. The Special Envoy visited Myanmar again from 30 September to 2 October 2003. He visited Daw Aung San Suu Kyi and confirmed that she was well and in good spirits, recovering from recent major surgery she had undergone for a gynaecological problem at a private hospital.

17. In any case the resulting climate created by false rumours and misinformation set back the carefully nurtured dialogue yet again.

III. Recent political developments in Myanmar

18. On 30 August 2003, the Government of Myanmar outlined a seven-step political programme for the transition to democracy. The road map was overwhelmingly welcomed in the country and was well received by neighbours and friends of Myanmar.

19. The ninth summit meeting of the Association of Southeast Asian Nations (ASEAN) held on Bali, Indonesia, in November 2003 welcomed the positive developments in Myanmar and characterized the road map as a "pragmatic approach deserving understanding and support".

20. The Secretary-General, in response to a communication from the Myanmar Prime Minister in September 2003, stated that he was encouraged by the adoption of the Government of its own road map for a transition to democracy and committed the United Nations to help facilitate the effort.

21. The first crucial step of the road map, the reconvening of the National Convention, was taken on 17 May 2004.

22. The Convention was attended by 1,088 delegates. Only 44 delegates declined the invitation to participate. These were 33 from NLD, 8 from its affiliate, the Shan NLD and 3 from a minor Kokang group. The Convention was much more inclusive than the previous one, which had only 700 delegates. Of the total of 1,088 delegates, 633 were from the various national races. Additionally, it was also attended by over 100 delegates representing 17 major and another 17 smaller armed groups who had returned to the fold.

23. The first session of the Convention focused upon the issue of power sharing between the Central Government and the states and regions. This is an issue of much importance to Myanmar, a union of 135 national races. The states and regions will have their own executive and legislative bodies in the envisaged new structure.

24. The complex and sensitive nature of the issue resulted in time-consuming and at times intense discussions. After a successful first session, the Convention adjourned on 9 July 2004. Preparatory work is under way for the second session, soon to resume in the forthcoming open season.

25. A common desire among the delegates to ensure the success of the road map was evident in the first session. The outcome of the session justified the assessment of the road map as a pragmatic approach for a smooth transition to democracy.

26. The credibility of the Convention has never been questioned by any quarter within the nation except by NLD and its affiliate, the Shan NLD. The two parties declined the personally delivered invitations extended by the Convention convenors to participate in this important process. They have failed in their bid to sway public opinion away from supporting the National Convention.

27. The Government of Myanmar, in its communication of 18 September 2004, assured the Secretary-General of its unsparing efforts to ensure the success of the Convention which would lead to the successful drafting and an adoption by

referendum of a democratic constitution. Free and fair elections would then be held in which the people of Myanmar will elect leaders of their choice. The Government, under the new Prime Minister, again assured that all previous political commitments of the Government would be honoured. It should be noted here that the seven-step road map was conceived and implemented by the decision of the State Peace and Development Council and the Government formed by it.

28. Myanmar is fully capable of overcoming its national challenges. The international community could best help by allowing Myanmar to resolve domestic issues by itself.

IV. Cooperation with the United Nations

29. Cooperation with the United Nations is a cornerstone of Myanmar foreign policy. Myanmar firmly subscribes to the principles and purposes of the Charter of the United Nations including the principles of the sovereignty of States and that of non-intervention in the internal affairs of States.

30. Despite having dissociated itself from the yearly General Assembly resolution, Myanmar has welcomed the Special Envoy of the Secretary-General, Razali Ismail, for a total of 12 times during the past four years. This is ample evidence that the Government extends all possible cooperation to the Special Envoy in the exercise of his office. It extends cooperation in a similar manner to Special Rapporteur of the Commission on Human Rights, Paulo Sérgio Pinheiro. The latter has so far visited Myanmar for fact-finding missions on six occasions during the past four years.

31. Myanmar places high priority on cooperation with the United Nations. The Prime Minister of the Union of Myanmar has communicated to the Secretary-General important developments as they occur in Myanmar. The leader of the Myanmar delegation to the General Assembly sessions takes the opportunity to brief the Secretary-General on developments in Myanmar. The leader of the Myanmar Delegation to the fifty-ninth session of the General Assembly, the Minister at the Office of the Prime Minister and the Minister for Foreign Affairs also took the opportunity of their visit to the General Assembly session to brief the Secretary-General on developments and to exchange views with him.

32. Myanmar consistently cooperates with United Nations bodies on human rights issues. It provides information sought by United Nations bodies, such as the Commission on Human Rights, and its thematic rapporteurs. Staff of all 10 United Nations agencies in Myanmar are able to travel extensively and without hindrance throughout the country for the implementation of their respective programmes. Many independent non-governmental organizations operate in Myanmar, not only in urban areas but also in remote regions for the betterment of the living standards of the people.

33. The Government cooperates with ICRC by allowing unhindered prison visits throughout the country. ICRC is able to learn at first hand the situation of prisons by meeting with prison inmates in accordance with its standard procedures. Special Rapporteur Paulo Sérgio Pinheiro has commented positively on this in his interim report (A/59/311).

34. A 20-member Human Rights Committee with the Minister for Home Affairs as Chairman was formed in April 2000. The Committee is a forerunner of a

commission to be formed in accordance with recognized international principles. The Committee has since held a series of human rights workshops in various parts of the country with the cooperation and assistance of Australia, disseminating information on human rights standards for public officials nationwide. The dissemination process is being widened to benefit a greater range of citizens.

35. The Myanmar Human Rights Committee and the Office of the United Nations High Commissioner for Refugees (UNHCR) are cooperating on a programme of human rights law training for officials serving in the border areas. Five intensive workshops have so far been conducted in Yangon, Kayin and Mon States and Tannithayi Division. The Special Rapporteur has taken note of this positive cooperation in his interim report.

36. With regard to the rights of the child, Myanmar acceded to the Convention on the Rights of the Child in 1991, and promulgated the Child Law in 1993. It adopted rules and regulations relating to the Child Law in 2001. Subsequently, a National Committee on the Rights of the Child was established to effectively implement the provisions of the law.

37. Myanmar has already submitted its second national report to the Committee on the Rights of the Child (CRC/C/70/Add.21). A high-level Myanmar delegation participated in the thirty-sixth session of the Committee at Geneva in May 2004. It engaged in constructive positive dialogue with members of the Committee on Myanmar's second national report. The Government has invited a delegation of the Committee headed by its Chairman to visit Myanmar.

38. Myanmar has also adopted an "Education for All" national action plan. In addition, the Government has introduced human rights awareness lessons in school curricula nationwide as well as through workshops.

39. In July 2004, the Myanmar Supreme Court and the United Nations Children's Fund (UNICEF) organized a workshop on juvenile justice for senior policy makers in government. It was attended by the Chairman of the Committee on the Rights of the Child.

40. These are but some among the many activities related to promotion and protection of human rights of the citizens of Myanmar in cooperation with the United Nations.

V. Allegations of human rights violations

41. Myanmar is unjustly accused of systematic violations of civil, political, economic, religious, social and cultural rights, even of the right to development. The accusations are being levelled against Myanmar at a time when it is peacefully developing, emerging from years of isolation and successfully integrating into the region. The allegations originate from some Western quarters, aided and abetted by exiles and expatriates that would prefer to see a Myanmar that is in disunity and in conflict. Demands voiced for specific political measures and personalities are evidence of motives other than the desire to promote and protect human rights of Myanmar.

42. Myanmar truly recognizes the importance of human rights. The issue should be addressed on its own merits with objectivity, impartiality and non-selectivity. The

historical background and social, religious and cultural characteristics of the country must be accorded due consideration. Allegations and accusations that are aimed at discrediting any government for political purposes run counter to the promotion and protection of human rights.

A. Child soldiers

43. An interview by a freelance reporter with 25 or so insurgents inside a neighbouring country became the basis of a non-governmental organization report that claims there are some 70,000 child soldiers in the Myanmar national armed forces. This is a preposterous and far-fetched conclusion. The falsehood has found its way into the resolution on the situation of human rights in Myanmar and in the report of the Secretary-General on children and armed conflict.

44. The issue of child soldiers is being employed by some Western Governments and well-financed anti-government expatriate groups in a concerted emotional disinformation campaign aimed at creating an environment for the international community to bring political pressure upon Myanmar.

45. The Myanmar armed forces is an all-volunteer organization. The Defence Services Act of 1974 does not allow any enlistment below the age of 18 years. Policy and practice also do not permit this. No United Nations agency operating in Myanmar has verified the allegation.

46. Myanmar has a strictly enforced preventive programme that disallows child soldiers. A Committee for the Prevention of Military Recruitment of Under Age Children was established on 5 January 2004. The Committee consists of the Ministers for Foreign Affairs, Labour, Social Welfare and Home Affairs, the Judge Advocate General and two high-ranking officials from the Ministry of Defence. The Chairman of the Committee is the First Secretary of the State Peace and Development Council.

47. The Chairman of the Committee recently received the UNICEF Resident Representative in Yangon. The UNICEF Representative herself visited the army recruitment centre near Yangon, and together with the United Nations Resident Coordinator visited the army recruitment centre in Mandalay. They freely held discussions with military personnel concerned on recruitment matters and also with recruits.

48. A plan of action has been developed to realize the objectives of the Committee. It includes recruitment procedures, procedures for discharge from military service, reintegration into society, public awareness measures, punitive action to be taken against transgressors, reporting measures, submission of recommendations and cooperation with international organizations, including UNICEF, ICRC and the United Nations Resident Coordinator. The plan of action was adopted by the Committee on 5 October 2004.

49. Myanmar is not a nation in a situation of armed conflict. It is a nation at peace. It does not recruit child soldiers either as a matter of law, policy or practice. Myanmar will continue its cooperation with UNICEF, as well as with the Special Representative of the Secretary-General on Children and Armed Conflict.

B. Trafficking in persons

50. Myanmar views trafficking in persons as a grave issue confronting humankind. To combat this menace, it has put in place a comprehensive framework comprising national legislation, high-level commitment, a national plan of action and bilateral, regional and international cooperation.

51. Although there are several laws that adequately cover various aspects of trafficking in persons, a new law is being drafted in accord with the United Nations Convention against Transnational Organized Crime. Myanmar plays an active part in the Bali Process on the issue. Myanmar hosted the meeting of the six-nation Coordinated Mekong Ministerial Initiative against Trafficking in October 2004.

C. Allegations of rape and other forms of sexual violence

52. Allegations of rape and other forms of sexual violence, contained in expensive dossiers, are circulated by well-funded non-governmental organizations with links to armed terrorist groups and expatriate organizations. In May 2002, a so-called report entitled "License to Rape" was published by "Shan Human Rights Foundation" and "Shan Women's Action Network". In September 2004 yet another unheard of group calling itself "Women's League of Burma" (WLB) brought out a publication under the title "System of impunity". The WLB members are said to be non-governmental organizations of various races. In fact these non-governmental organizations are none other than bogus organizations misusing the names of the national races as a cover for their nebulous activities. The allegations are part of an anti-Government agenda and are in fact a propaganda war waged with ill intent to slander and discredit the Myanmar armed forces, and to cause disunity and distrust among the national races.

D. Forced labour

53. Myanmar has been cooperating with the International Labour Organization (ILO) in resolving the issue of forced labour. In the past, some provisions of the Village Act and the Towns Act, which it inherited from the British colonial authorities, were alleged to be in conflict with ILO Convention No. 29 concerning Forced Labour. To address the issue, Myanmar took the necessary legislative, executive and administrative measures and issued two legislative orders: Order 1/99 and Order Supplementing Order 1/99, thereby bringing domestic legislation in line with Convention No. 29.

54. At the invitation of the Government, an ILO technical cooperation mission visited Myanmar four times during 2001-2002. A high-level ILO team, led by a former Governor-General of Australia, Sir Ninian Stephen, also paid a successful two-week visit to Myanmar in September and October 2001.

55. An agreement between the Government and ILO in March 2002 has led to the appointment of an ILO liaison officer in Myanmar. With a view to eliminate vestiges of forced labour a joint plan of action was worked out between the two sides.

56. Myanmar for its part made known its political will and commitment to implement the plan in cooperation with ILO during the evaluation visit of the Special Advisor to the ILO Director-General, Francis Maupain, in March 2004. Yet the joint plan cannot be implemented because some are linking the implementation with irrelevant and extraneous political issues.

57. Recently nine persons were sentenced to death for the most serious crime of high treason. An allegation was sent to ILO, which stated that three of the nine had been sentenced to death because of contacts with ILO. The allegation is completely false. In fact the court has clearly ruled that under no circumstances do contacts and cooperation by a citizen with ILO or other United Nations organizations constitute a criminal offence.

E. Religious intolerance

58. Sadako Ogata, a leading United Nations personality, after her visit to the country cited Myanmar as a "model society" for religious tolerance. Yet some continued to allege religious intolerance in the country. Although Buddhism is the religion of the majority of the people, other religions such as Christianity, Islam and Hinduism coexist and flourish in Myanmar. The Government provides all necessary assistance to encourage and maintain inter-religious harmony and freedom of worship. As in previous constitutions, the fundamental principles of the new constitution will include similar guarantees against religious discrimination and intolerance. Religious feast days of all religions are gazetted holidays and senior leaders of the country participate in the celebrations of these feasts.

VI. Economic development

59. The Government inherited a centrally planned economic system that resulted in an alarming economic decline. After taking over State duties it resolved to meet the aspirations of the people and to build a modern nation step by step in a systematic manner. The tasks are enormous for a developing nation. To raise the economic and social life of the people, sufficient economic infrastructure is a necessity. From 1989/90 to 1991/92 the Government focused on restoring stability while implementing plans to halt the economic slide. The private sector was provided with opportunities to grow. From 1992/93 to 1995/96 the economy grew by 7.5 per cent annually. From 1996/97 to 2000/01 the economy grew by an annual 8 per cent. A third five-year short-term plan is in the course of implementation. During fiscal year 2002/03 the growth rate was 11.1 per cent.

60. Twenty-four special development zones among 14 administrative states and divisions are entrusted with special development plans, especially with tertiary education facilities. For balanced and proportionate development, universities and colleges were set up in 14 administrative states and divisions to serve the local population in capacity-building for long-term development. Initiatives for development of special zones, model village development, greening project and community development projects are also being implemented. Microcredit schemes for community development in remote townships of Kachin, Chin and Rahkhine States have been initiated.

61. The Government is giving top most priority to human resource development, and has been carefully nurturing intellectuals and the intelligentsia. There are now 156 universities and colleges nationwide compared with 32 in 1988. Information and communication technology is being developed as a practical and functional subject with applications in other disciplines and as a tool for the dissemination of information.

62. Information and communication technology-based learning and resource centres have been opened for basic education schooling to the university level. Universities now have access to e-library, Internet and Intranet services and can employ videoconferencing and web-based systems. Information and communication technology parks have been opened in both Yangon and Mandalay. E-passport, e-visa, smart card, e-commerce and e-government systems have been put into use in the country.

VII. Conclusion

63. The Government of the Union of Myanmar is fully committed to bringing about a transition to a peaceful, prosperous and modern democratic State. The transition to democracy has to be based on firm foundations.

64. The Government of Myanmar with this in mind has taken the first crucial step of the road map, the reconvening of the National Convention. It was reconvened on 17 May 2004 and following a successful first session adjourned on 9 July. With 1,088 delegates, it is the most inclusive and credible convention ever. The Government and the people have displayed the common desire for the success of the road map. There is no other alternative through which the aspirations of the people can be met.

65. At a time when Myanmar has revived unity among the 135 national races, is at peace within itself and is integrating into the region, it is odd and most perplexing that some Western countries in collusion with expatriates and exiles are mendaciously accusing Myanmar of human rights violations. They have not recognized, let alone supported, the restoration of peace and the cessation of armed conflict with various insurgencies. They are imposing unilateral sanctions upon Myanmar while ignoring the positive economic and social progress achieved. The glaring irony is that these unilateral sanctions hurt mostly the workers and the poorer and most disadvantaged of Myanmar society and constitute violations of the rights of such people. As a specific example, the Special Rapporteur has rightly documented 50,000 garment workers, most of them women, and sole family income-earners, who have lost their livelihoods by the callous unilateral sanctions imposed by a major Power, in contravention of World Trade Organization rules.

66. For its part, the Government remains steadfast in its endeavours to build a firm foundation for the people to enjoy a prosperous and democratic future.